



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

TO: Barry E. Hill, Director, Office of Environmental Justice ("OEJ")
Office of Enforcement and Compliance Assurance ("OECA")

FROM: Theodore J. Kim, Legal Counsel, OEJ/OECA /s/ *Ted Kim*

DATE: March 16, 2006

RE: "Environmental Justice in the News" for the Week Ending March 17,
2006

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This memorandum summarizes select environmental justice news actions for the period beginning February 16, 2006 through the week ending March 17, 2006. The summary is limited to Lexis/Nexis searches conducted using the query: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/25 minorit! or low***income) or (executive order 12898) or (civil right! w/25 environmental) or ("fair housing act" w/25 (environment! or zon!))." Please note that multiple articles covering the same topic were not included. Similarly, articles on international or foreign-based environmental justice issues were not included, unless they specifically pertained to the United States.

1. **News Items.**

The following news was particularly noteworthy:

- **"Utah's Toxic Opportunity; Some Goshute Indians Want to Create a Nuclear-Fuel Dump on Their Land. Controversial? Of Course,"** **Time (March 13, 2006) at A11.** According to the article, a controversy has developed among members of the Goshute Indian Tribe ("Tribe") in Utah, because of plans to develop a \$3.1 billion nuclear waste holding site on its reservation. In February, the Nuclear Regulatory Commission issued a license to begin the project, which would pay the Tribe as much as \$100 million in fees over 40 years. The Tribe's chairman, Leon Bear, brokered the deal; however, resistance exists among some members of the Tribe, who believe the project constitutes "environmental racism." In addition, the Governor of Utah, Jon Huntsman, Jr. does not support the deal, since it would allow 44,000 tons of highly radioactive spent fuel that is being stored at other nuclear plants nationwide to be stored in the State.

- **“Northwestern University Feinberg School of Medicine, Chicago; Heath Disparities in Asthma Highlighted in Journal,” Pharma Investments, Ventures, and Law Weekly (March 12, 2006) at 163.** According to research in the February 2006 *Journal of Allergy and Clinical Immunology*, African-Americans are four times more likely to be hospitalized and five times more likely die of asthma compared to non-African-Americans. In addition, the study found that asthma prevalence is highest for Puerto Rican Americans. According to the study, efforts to improve asthma care nationally over the past decade have not reduced the gap between African-Americans and white people for differences in hospitalizations and mortality. The study concluded that the reduction of “disparities in asthma care should be a national priority for research, health policy, and community action.”
- **“OEHHA Release of Fish Guidance May Prompt New Discharge Limits,” Inside Cal/EPA (March 10, 2006).** According to the article, a proposed fish advisory guidance that the Office of Environmental Health Hazard Assessment (“OEHHA”) issued on March 3, 2006 “may not sufficiently protect minority and poor communities from eating contaminated fish.” Critics believe that environmental justice concerns exist with the draft guidance, which addresses several Proposition 65-listed carcinogens that bioaccumulate in fish. Specifically, the critics note that the proposed guidance “is designed to protect recreational anglers and does not address subsistence fishing by poor and minority communities that may consume as many as three or four meals per week of locally caught fish.” In addition, the critics assert that the guidance may harm poor and minority communities unless regional water boards make certain changes to the fish advisory guidance levels, particularly for banned pesticides. The guidance levels are important, and critics believe that they should represent more protective “risk levels based on a one-in-a-million chance of getting cancer from eating contaminated fish tissue.”
- **“Critics Dust Off an EPA Panel: Plan Would Roll Back Monitoring of Soot, Dust in Small Cities,” Fresno Bee (CA March 9, 2006).** According to the article, residents of Fresno, California expressed their concerns about a proposal from the United States Environmental Protection Agency (“EPA”) that would drop federal monitoring for dust and soot in communities with less than 100,000 residents. A hearing was held on March 8, 2006, and residents, scientists, environmentalists and others noted their opposition to the changes in the PM-10 standards, due to, among other things, such health concerns as asthma and heart problems. An EPA hearing office asserted, however, that the most extensive P-10 research focuses on city pollution, because “there is much less science available about rural areas.” However, the residents were not persuaded and fear that lifting the federal protections will result in air quality deterioration.

- **“No Plans to Expand Refinery,” San Francisco Chronicle (March 9, 2006) at C1.** According to the article, Tesoro Corporation announced on March 8, 2006 that it will not expand its Martinez gasoline refinery and will not reconfigure it to handle a heavier grade of crude oil. The company’s announcement stemmed from criticism by the environmental group, Communities for a Better Environment, who believed that the company’s actions violated unspecified environmental justice principals.
- **“Clean Air Act Perpetuates Environmental Racism,” University Wire (March 9, 2006).** According to the editorial, EPA’s proposed revisions to the Clean Air Act’s (“Act”) regulation of particulates “represent a conscious decision by the federal government to ignore a certain and continual threat to the American people.” The editorial asserted that low-income and minority communities disproportionately bear the health risks associated with particulates, as evidenced by the fact that 46 percent of the Nation’s public housing is within a mile of factories that have reported toxic emissions to EPA. The editorial noted that African-Americans are 79% more likely than white people to live in polluted neighborhoods, and communities of color in California will likely breath almost three times more of the heavily-polluted air. The editorial continued by stating that the changes to the Act will further exacerbate environmental injustice and directly contradicts the mandate of Executive Order 12898. The editorial concluded by urging EPA to strengthen its proposed revision to the Act before its finalization in September.
- **“The Bush Budget Abandons Environment: Putting Polluters Ahead of American Taxpayers,” State News Service (March 6, 2006).** The article set forth a statement from the United States House of Representatives that criticized President Bush’s budget for Fiscal Year 2007. In asserting that the budget puts special interests first at the expense of the American public, the statement articulated that the budget was fiscally reckless. The statement was critical of the 4 percent cut to EPA’s funding, which would impact EPA’s enforcement of key environmental statutes. The statement also criticized the 28 percent cut to environmental justice funding below this year’s enacted level. The statement noted that the \$1.7 million cut would hurt the environmental justice programs that “protect the health and welfare of low-income and minority communities from environmental toxins related to industrial pollution.”
- **“New England Community-Based Nonprofits May Apply for EPA Grant,” State News Service (March 6, 2006).** The article set forth an EPA press release that announced that EPA’s New England Regional Office was seeking applications for two funding programs that help local groups reduce environmental risks in communities. Specifically, the release sought applications for the “Environmental Justice Small Grants” (“Small Grants”) Program or the “Environmental Justice Collaborative Problem-Solving” (“CPS”) Program, but not both. The Small Grants

Program would provide \$50,000 grants to an entity that will “form collaborative partnerships, educate the community, develop a comprehensive understanding of the local environmental and/or public health issues, and identify ways to address these issues at the local level.” Alternatively, the CPS Program would provide \$100,000 to an entity to “address an existing local environmental and/or public health issue.” The CPS project cannot focus on training or education, however. The Region expects to award 3 grants that total \$200,000. Applications for both programs are due by March 31, 2006.

- **“Shipping’s Dirty Cargo; Port Pollution Poses Huge Health Threat, Says Union,” San Francisco Chronicle (March 4, 2006) at C1.** According to the article, the International Longshore and Warehouse Union (“ILWU”), a labor group that historically has not undertaken environmental causes, has begun a campaign to reduce air pollution at West Coast ports. Of concern is the fact that cargo ships emit a great amount of fine particulate matter that may cause a variety of respiratory and cardiovascular problems, such as asthma or heart troubles. Accordingly, ILWU has begun an initiative to reduce ship pollutants by 20 percent by the year 2010. Included among the ILWU’s initiatives are “lobbying shipping companies to invest in both proven and emerging pollution-reduction techniques, and [seeking] stronger international standards for cleaning polluted ships.” Environmental groups, such as the Natural Resources Defense Council, have welcomed ILWU’s initiative.
- **“Chemical Level Increase; Perchlorate: Tests Detect 3,500 Parts Per Billion – The Highest Concentration Yet – In the Rialto Plume,” Press Enterprise (CA March 4, 2006) at B1.** According to the article, “‘astronomical’” levels of perchlorate were found in new testing at a northern Rialto industrial site. The discovery of perchlorate, which has been linked to thyroid problems, at a level of 3,500 parts per billion stunned observers and represented “more than four times the highest level that has been found in several drinking-water wells in Rialto and Colton.” Environmentalists fear that the perchlorate, which was detected in a six-mile plume, would move off site and hit drinking wells, which might place residents at a disproportionately adverse health risk.
- **“Human Rights Group Calls for Katrina Investigation; It Wants Scrutiny by International Agency,” Times Picayune (March 4, 2006) at 14.** According to the article, on March 3, 2006, environmental and civil rights advocates requested the Inter-American Commission on Human Rights (“Commission”) to investigate whether the United States Government (“United States”) is adequately helping Hurricane Katrina victims and whether contractors are exploiting workers helping with the cleanup and rebuilding. While the Commission lacks authority over the United States, the civil rights advocates believe that a critical report from the Commission would spur the United States into action. Critics of the

United States assert that its initial response was lethargic and “that not enough has been done in six months since the storm made landfall to help evacuees rebuild.” In addition, the critics question whether “the race of many of the victims and the ethnicity of many recovery workers have impacted the government’s response.” The Commission was informed that the immigrants were victimized after Hurricane Katrina, because they were allegedly threatened with deportation rather than receiving disaster assistance. Moreover, many immigrant workers brought to New Orleans “were promised salaries and temporary housing to work in New Orleans, but were stiffed by their bosses.” The Commission has not decided whether it would investigate.

- **“N.O. Spots Are Testing Positive for Toxins: But Most Chemicals Here Before Katrina,” Times Picayune (March 6, 2006).** According to the article, “[a] litany of environmental and health unknowns hangs over [New Orleans] more than six months after Hurricane Katrina, from 46 potential hot spots of contamination and the continuing cleanup of 8 million gallons of spilled oil, to health care workers raising the alarm over a spike in Legionnaires’ disease.” Despite these findings, however, authorities believe with increasing confidence that New Orleans will not be “forever marred by tainted soils, foul waterways, and unexplainable health maladies.” The article discussed the fact that the “toxic gumbo” currently present in the City was not necessarily attributable to Hurricane Katrina. Rather, the article asserted that the “storm highlighted chemical problems and health issues that the City had lived with for decades.” The article noted that skeptics believe that “such sweeping characterizations gloss over complications caused by the storm.” These skeptics point to the significant limitations faced in attempting to recover from the damage, such as the limited amount of funding for the recovery effort. Determining the risk level of the chemicals in the soil and sediment samples also represents another difficult issue that has caused disputes between local and governmental officials.
- **“Disease Associations: Childhood Poverty Doubles Obesity Risk Among Black Women,” Genetics and Environmental Law Weekly (March 4, 2006) at B1.** According to the article, black women in the United States have a significantly increased risk of becoming obese if they grew up in poverty, regardless of whether they overcame the poverty in adulthood. However, women who remained poor as adults still faced great obesity risks, and women who grew up poor and became middle class as adults were still more obese than women who were never poor. The findings were based on a study of 679 women in Pitt County, North Carolina. The study determined that “black women who had a low socioeconomic status in childhood were twice as likely to be obese in adulthood as those who grew up in less disadvantaged households.”

- **“Inhofe Comments Fail to Help Cities’ Bid to Fight EPA Drinking Water Rule,” Inside EPA (March 3, 2006).** According to the article, Senator James M. Inhofe’s (R-OK) criticism of EPA’s disinfection byproducts (“DBPs”) rule (“Rule”) will not help the efforts of at least five Oklahoma municipalities who were seeking to challenge the rule in federal court due to concerns over the Rule’s implementation costs, as well as potential health issues that the DBPs might raise. In December, EPA finalized the Rule, which seeks to improve public health protection by reducing toxic byproducts created when drinking water systems use chlorine to limit microbial contamination. On September 7, 2005, Senator Inhofe sent a letter to EPA Administrator Stephen L. Johnson, which asserted that: “the scientific studies EPA used to justify the Rule overestimate the human health harm DBPs may cause; the Rule improperly requires water systems to monitor for total inorganic carbon (“TOC”) to detect the presence of DBPs, even though TOC is an unreliable indicator; and the rule violates EPA’s environmental justice policy because it does not adequately consider the cost to low-income populations.” Senator Inhofe submitted his comments in response to requests by small water system representatives, who planned to challenge the Rule in the United States Court of Appeals for the District of Columbia Circuit. However, legal analysts believe that Senator Inhofe’s comments are too general in nature and do not allege harm to a particular community, which will likely not provide the municipalities with standing to sue.
- **“Push for Greener Infrastructure Bonds Faces Republican Block,” Inside Cal/EPA (March 3, 2006).** According to the article, California Assembly and Senate Republicans are attempting to block efforts to pressure the State’s Legislature to add environmental protection principles to Governor Arnold Schwarzenegger’s infrastructure bond proposals. The pressure to add environmental protection principals stemmed from an assault that a coalition of approximately 35 environmental groups launched on Governor Schwarzenegger’s infrastructure bond proposal that, among other things, raised concerns about potential environmental injustices to lower income regions. On February 23, 2006, the coalition outlined ten environmental principles, such as ensuring environmental justice, which they believe the bond lacked. In response, one Republican Senator, Dave Cox (R-Fair Oaks District) cautioned against implementing principles of environmental justice into the bond, since no consistent definition for the term exists. Senator Cox asserted that ““when we talk about environmental justice, we get ourselves in trouble because we can’t define it.””
- **“Fresnans Protest Business Move; Neighbors Say Landscape Supply Company Will Create Traffic, Draw Pollution,” Fresno Bee (CA March 2, 2006) at B1.** According to the article, community organizers in a West Central neighborhood are attempting to block a landscaping supply

business from moving into the neighborhood. The Latino Issues Forum has organized weekly protests at the proposed site, where Rosenbalm Rockery hopes to move into, due to concerns that air pollution from the business and traffic may contribute to asthma and other illnesses among children attending a nearby elementary school. The group asserted that the notice provided to the residents, in the form of advertising in the *Fresno Bee* and letters to property owners within 350 feet, was insufficient since English is not the primary language for many of them. The group believed that a community meeting should also have been held to notify the residents. The Fresno City Council has already unanimously approved the move and believes it is too late to reverse its approval. However, the City hopes to organize asthma screening for students at the school.

- **“Rep. Wynn: Once Again, President Bush Budget Cuts Programs for Maryland’s Most Vulnerable Citizens,” U.S. Fed. News (Feb. 28, 2006).** The article set forth a press release by Maryland Representative Albert Wynn (D-District 4) that criticized President Bush’s budget for Fiscal Year 2007. Specifically, Representative Wynn took issue with many of the Administration’s proposals that “would reduce funding in grants to Maryland across a range of areas.” Environment was one of the areas that Representative Wynn focused his criticism. Specifically, he took issue with the fact that the budget “cuts \$1.7 million from the Nation’s funding for environmental justice programs that protect the health of low-income and minority communities from environmental toxins.”
- **“In New Orleans, Home Is Still Far Away; Half a Year After Katrina Ravaged the City, Most Residents Haven’t Returned. And Those Who Have Remain in a State of Uncertainty,” Los Angeles Times (Feb. 26, 2006).** According to the article, New Orleans “has become paralyzed with uncertainty” due to the fact that numerous areas of the City remain abandoned and suffering from decay. The article stated that only one third of New Orleans’ 500,000 residents have returned home while less than 15% of the 15,000 businesses are open. In addition to the fact that approximately two-thirds of New Orleans remains uninhabited, the article noted that “no aspect of the City’s recovery is going smoothly.” For example, thousands of abandoned cars remain despite a contract to remove them, and mail service delivery has not resumed for much of the City since the primary mail processing plant has not reopened. The situation has become so dire, that the article asserted that many residents have concluded to “[g]ive up on New Orleans.” The residents’ feeling of despair was exacerbated by the fact that “[p]eople want to return to revived neighborhoods, but neighborhoods will be revived only when they are repopulated.” The article concluded by discussing the impact of Hurricane Katrina on New Orleans’ black population, who believe that “they are being bulldozed to make room for a smaller, wealthier, [and] whiter city.” The article asserted that the federal government “was

granting household disaster loans to a higher percentage of white residents than black residents.” In addition, the article noted that no provisions were “incorporated in the City’s rebuilding plans for renters, an omission that disproportionately affects black residents and poorer areas.”

- **“National Children’s Study Supporters Rally for Funds. Bush ’07 Budget Kills Money for Ambitious Project,” Atlanta Journal-Constitution (Feb. 24, 2006) at 7A.** According to the article, the White House’s decision not to fund a National Children’s Study has lead advocacy groups devoted to health, environmental, and civil rights issues to attempt to persuade Congress to provide funding. The study, which was initiated as a collaboration of EPA, the Centers for Disease Control and Prevention (“CDC”), and the National Institutes of Health (“NIH”), was launched to better understand the role of environmental, genetic, and lifestyle factors in common health conditions, such as asthma, autism, and diabetes. Environmental justice advocates supported the study, because it may have been able to identify possible links between health pollution and health disparity. According to the article, President Bush did not provide funding for the study in the Fiscal Year 2007 budget, and NIH was also ordered to stop spending federal funds on it.
- **“EPA Claims Limited Authority to Respond to Gulf Coast Disasters,” Clean Air Report (Feb. 23, 2006).** According to the article, testimony before the National Environmental Justice Advisory Committee (“NEJAC”) revealed that EPA lacked the authority to address many of the environmental health threats that resulted from the Gulf Coast Hurricanes. Environmentalists were considering suing EPA over its hurricane response arguing that EPA failed to respond to the disasters using the full scope of its powers under the law. In early February, the NEJAC convened a subcommittee on the Gulf Coast recovery and heard comments from various stakeholders, including EPA representatives who addressed EPA’s role in addressing the disasters. In response to charges that EPA failed to conduct sufficient testing, as well as failed to examine indoor air health threats or provide definitive statements on whether neighborhoods were habitable, EPA representatives noted that the Agency’s authority to respond to disasters was limited within the scope of the National Response Plan (“NRP”) to such activities as drum and barrel removal and water and air monitoring. With regard to assessing public health impacts of the disaster, one EPA presenter stated that the CDC bore primary responsibility on general public health issues related to the Hurricanes. In addition, another EPA source articulated that the local authorities, not EPA, bear the responsibility for coordinating with CDC and determining whether an area is safe. According to other testimony before the NEJAC subcommittee, EPA lacks authority to regulate indoor air threats, like mold, which is “not considered the ‘release’ of a hazardous substance that EPA can regulate.” The article concluded that the NEJAC subcommittee

is working on recommendations on how to ensure a better response to future disasters.

- **“White House Katrina Report Highlights,” Associated Press Online (Feb. 23, 2006).** The article summarized some of the highlights of a report, entitled “The Federal Response to Hurricane Katrina: Lessons Learned,” that the White House issued on February 22, 2006. Among the recommendations include: (1) the Defense Department and the Department of Homeland Security should plan how the military will participate in response to the next overwhelming catastrophe; (2) the Department of Homeland Security and other agencies should improve their communication abilities during a disaster; (3) the Department of Health and Human Services should better plan how it can provide large amounts of public health and social services in devastated areas; (4) the Housing and Urban Development Department must plan how it can provide more temporary and long-term housing assistance after disasters; (5) EPA and other agencies must determine how they can more quickly ascertain whether a disaster area has environmental hazards; (6) a national operations center must be established to coordinate federal response and ensure that all government agencies receive information; and (7) federal and local agencies must better coordinate assistance from private organizations.
- **“New Grant Funds Will Assist New England Communities Target, Reduce Environmental Risks,” U.S. Fed. News (Feb. 23, 2006).** The article set forth a press release from EPA’s Region I office regarding the availability of up to \$30,000 in grant funding through EPA’s Healthy Communities Grant Program. Specifically, the press release announced that EPA plans to award between 20 to 25 grants, ranging from \$5,000 to \$30,000, for one to two-year projects under this competitive program. The Healthy Communities Grant Program integrates nine EPA New England programs to improve environmental conditions through identifying and funding projects that target resources to benefit environmental justice areas of potential concern, *i.e.*, communities at risk, and sensitive populations. To qualify, projects must: (1) directly benefit one or more of the four Target Investment Areas, which include environmental areas of potential concern; and (2) achieve measurable environmental and public health results in one or more of the seven target program areas, which include asthma, capacity-building on environmental and public health issues, and smart growth. Applications, in the form of one-page project summaries, are due on April 5, 2006.
- **“Unique Power Plant Called Dirty; A Poor Riverside County Area Would Be Hurt by the Project Now Under Construction, Says a Coalition Filing Notices of Intent to Sue,” Los Angeles Times (Feb. 23, 2006) at B9.** According to the article, a power plant that is under

construction in the impoverished and largely Latino Riverside County of Romoland, California is the focus of a potential lawsuit that a coalition of environmental groups and community residents may file if certain conditions are not met. Governor Arnold Schwarzenegger and the General Electric Company (“GE”) believe that the plant, which would be built 1,000 feet from an elementary school in a region that already suffers from the highest soot levels in the State, will reduce air pollution in the form of greenhouse gas-causing emissions more efficiently. However, the coalition of groups believe that GE’s new H-style turbine plant will, in actuality, emit nearly three times more unhealthy particulate matter into the air than older facilities. Accordingly, the coalition sent GE 60-day notices to sue for violations of the Clean Air Act; however, the coalition would prefer not to sue and have the project either moved or changed. According to the article, GE declined to comment on the potential lawsuits.

- **“Landfill Dumping to Slow Under Deal: But New Proposed Site is Near Wildlife Refuge,” Times-Picayune (Feb. 23, 2006).** According to the article, a settlement between the Louisiana Department of Environmental Quality (“DEQ”) and the Louisiana Environmental Action Network (“LEAN”), which was reached on February 22, 2006, will dramatically curb the dumping of reconstruction debris at the Old Gentilly Landfill in New Orleans. Under the settlement, DEQ agreed to limit daily dumping at the landfill to 19,000 cubic yards of waste until DEQ develops a “decisional document” that supported its approval of the site. LEAN, which would like the landfill to close, was pleased that the settlement required public comment on the landfill, which has never occurred before. LEAN hoped that such comment would reflect public sentiment against the landfill and the need to build such a landfill elsewhere. While DEQ and LEAN were happy with the settlement, the landfill’s operator was not and stated that the Old Gentilly’s reduced daily intake of waste will slow the cleanup in New Orleans, because other landfills are too far away.
- **“Fred Hutchinson Cancer Research Center, Seattle; English As Second Language Program Will Test for Hepatitis B in Chinese Americans,” Genetics & Environmental Health Week (Feb. 22, 2006) at 33.** According to the article, researchers have developed an English as a second language program to test for hepatitis B in Chinese Americans. The impetus behind this newly developed curriculum was the fact that many Chinese Americans are foreign born and “require special attention from public health professionals because of low levels of acculturation and difficulties learning English. It has long been established that an English as a Second Language (“ESL”) curriculum can teach immigrant adults and their families important life skills.” The new ESL curriculum is envisioned to motivate Chinese ESL students to get a blood test for hepatitis B, which is a major risk factor for liver cancer in Asia.

According to the article, “Chinese Americans are at disproportionately high risk of liver cancer.”

- **“University of North Texas, Ft. Worth; More Tobacco Training Initiatives Would Benefit U.S. Hispanic Physicians,” Lab Business Week (Feb. 19, 2006) at 274.** According to the article, Hispanic physicians in the United States will benefit from increased tobacco training initiatives, because they “may be most suited to attend to the health education needs of the growing . . . Hispanic population.” Specifically, the article identified tobacco use prevention and smoking cessation as the two primary training areas of need for the physicians. The training would be useful in helping the Hispanic physicians intervene when necessary to address their patients smoking practices.
- **“Texas A&M University: Divide Between Cancer Survivorship and Minorities Need Bridging,” Lab Business Week (Feb. 19, 2006) at 201.** According to the article, researchers have found that a divide exists between cancer survivorship initiatives and the participation of minority communities. The divide stemmed from several factors, “including biologic reactions to environmental activities, socioeconomic status, perceived beliefs and notions of medical professionals, a lack of resources to participate in cancer support groups, and having personal contact with cancer survivors.” The researchers identified three strategies to use to proactively address this divide, which were: (1) include minorities in clinical trials, intervention studies, and research programs; (2) develop cultural environments; and (3) sustain minority participation.
- **“Minority Communities on Dangerous Ground: Activist Says Poor Areas, Like Ones Hit by Katrina, Are More Vulnerable to Environmental Hazards,” Times Union (Albany, N.Y. Feb. 19, 2006) at D1.** The article noted the keynote speech of Vernice Miller-Travis at an environmental justice conference in New York on February 18, 2006. Ms. Miller-Travis discussed the aftermath of Hurricane Katrina and expressed her disappointment in numerous post-Hurricane Katrina reports that failed to “acknowledge the environmental aspects of the disaster and the role of agencies, such as EPA --- both in dealing with the aftermath and making rebuilt communities less vulnerable.” Ms. Miller-Travis, who leads Groundwork U.S.A., further asserted that environmental issues appeared “almost invisible” in the reports.” However, she did note that the “thin silver lining to Hurricane Katrina” was the fact that the Hurricane “illuminated the extreme vulnerability of minority communities to environmental hazards.”
- **“University of Southern California: Invasive Skin Cancer a Growing Problem Among Hispanics,” Biotech Law Weekly (Feb. 17, 2006) at 308.** According to the article, a new study, which was published on

January 23, 2006, indicates that California Hispanics have experienced a significant increase in the incidence of melanoma. Moreover, in contrast to non-Hispanic Caucasians, “increases in melanoma in Hispanics have been confined to thicker lesions, which have a poorer prognosis.”

Melanoma is responsible for the majority of skin cancer deaths, and the major risk factors for melanoma are fair skin and a history of significant sun exposure. According to the article, “little is know about the incidence of melanoma among Hispanics, the fastest-growing racial/ethnic group in the U.S., which has the highest rates of melanoma in the world.” The article concluded that the trend towards increasing rates of invasive and thicker melanomas in Hispanics pose considerable health concerns for public health officials.

- **“PA DEP Seeks Members for Environmental Justice Advisory Board,” PR Newswire U.S. (Feb. 16, 2006).** According to the article, the Pennsylvania Department of Environmental Protection (“DEP”) is seeking candidates to join the Environmental Justice Advisory Board (“Board”). Responsibilities of Board members include: (1) fact-finding; (2) developing protocols; and (3) making recommendations to the DEP with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The Board is particularly seeking candidates with an interest and background in environmental justice issues for the two-year appointment.
- **“Congresswoman Solis Joins Members of the Congressional Black Caucus in Response to Hurricane Katrina Rescue Efforts,” Press Release (Feb. 16, 2006).** According to a press release, California Congresswoman Hilda L. Solis (D-CA) delivered a speech at a press conference with the Congressional Black Caucus on February 16, 2006 regarding the response to Hurricane Katrina. Congresswoman Solis spoke in opposition to the perceived “efforts to ignore the ongoing tragedy of Hurricane Katrina.” Specifically, she pointed to efforts by some in Congress to “gut” environmental justice and public health regulations. In addition, she called on Congress not to make the same mistakes that were made following prior hurricanes, which “resulted in communities of minorities and under-served populations being settled on and schools being built on toxic sites, such as the Agriculture Street Landfill in New Orleans.” She urged continued compliance with all environmental justice and public health regulations during testing, monitoring, cleanup, recovery, and restoration. Congresswoman Solis wanted to ensure that “another generation of minorities and underserved communities” live without the “injustices of the past.”
- **“U. Montana Students Describe Katrina Cleanup,” University Wire (Feb. 14, 2006).** The article recounted the experiences of some University of Montana students who volunteered to help clean up parts of New

Orleans during their winter break from January 12-26, 2006. Ten students and two professors visited impacted areas of New Orleans, including the Ninth Ward, and helped in the reconstruction of a few places. Included among the groups that the students and professors helped were those most in need, such as single mothers and minorities. According to the article, the “majority of help that is found in New Orleans is people within the grassroots movement, church groups . . . [t]here is a lack of government help.” The article concluded by noting that the University of Montana plans another trip to New Orleans over Spring Break.

- **“Bill Aimed at Shielding Poor Communities from Polluters,” Boston Herald (Feb. 14, 2006) at 27.** According to the article, lawmakers in the Beacon Hill area are considering measures to protect their residents from undesirable development, including sludge plants and asphalt factories. Stemming from the perception that “economically hard-hit communities [are] often targeted for unpopular, pollution-packed projects,” lawmakers believe that a new set of “environmental justice” laws may present a viable solution. Included among the potential proposed changes is the creation of a special new permit that companies with high pollution projects would need to obtain prior to beginning the project. The article concluded by asserting that the proposed new environmental justice laws, which sparked opposition from local commercial developers, would deter industries that pollute from locating in low-income communities.
- **“EPA Touts Software as Helping to Limit Contamination in Schools,” Superfund Report (Feb. 13, 2006).** According to the article, EPA believes that a software program that it designed will help limit toxic contamination in schools while, simultaneously, “minimiz[ing] enforcement actions and prevent liability against school districts for not meeting environmental quality standards.” In January, EPA release the Healthy School Environments Assessment Tool (“Healthy SEAT”), which helps schools track chemical releases, as well as exposure to contaminants and poor indoor air quality. EPA believes that such monitoring of potential problems will prevent contamination from worsening and causing human health problems. Specifically, EPA believes that Healthy SEAT will allow districts to identify problems before EPA or states can bring an enforcement action. While noting the software’s effectiveness in limiting contamination at existing schools, environmentalists, however, believe that it fails to address the fact that school districts are increasingly siting facilities on polluted properties nationally.
- **“Lawmakers Call on EPA to Hire New Tester for Ringwood,” Knight-Ridder Tribune Business News (Feb. 10, 2006).** According to the article, New Jersey Senators, Frank Lautenberg (D-N.J.) and Robert Menendez (D-N.J.), have called on EPA Administrator Stephen L. Johnson to commence an independent evaluation of the danger that arsenic

and other pollutants in paint sludge and iron waste pose at Ford Motor Company's ("Ford") former dump in Upper Ringwood, New Jersey. The Senators request stemmed from the discovery of elevated levels of arsenic, above the State's safety cleanup level, in a pit in Ringwood State Park following the removal of paint sludge. In addition to the Senators' request, Representative Frank Pallone (D-N.J.) criticized the cleanup at the site and stated that the slow pace of the cleanup activities appeared to be a "form of environmental racism." Representative Pallone also urged an independent investigation, as well as for the site to be once again categorized as a Superfund site. In response, the Regional Administrator for EPA Region II, Alan Steinberg, reiterated EPA's commitment to determining the extent of arsenic contamination and ensuring a cleanup fully protective of human health.

- **"Biosafety Lab Site Smacks of Racism," Boston Globe (Feb. 10, 2006) at A18.** In this editorial, the Executive Director for the Lawyers' Committee for Civil Rights Under Law addressed a February 3, 2006 *Boston Globe* article, entitled "Biosafety Lab in South End Gets Final O.K.," which discussed Boston University's ("BU") plan to open a biosafety laboratory in an area with a predominantly Latino and African-American population. Specifically, the author noted, "[t]he fundamental issue is that this BU biolab is the latest and most egregious example of environmental racism. No matter how incalculable the risk of human error and evil intent, this risk is being imposed first and foremost on neighboring communities of color. There is no justification for the location of this potentially lethal laboratory in a low-income African-American and Latino community already burdened by ill health and environmental hazards. Boston University never bothered to consider less discriminatory alternatives. Instead, BU decided to dump its high-risk facility on those most vulnerable and least able to mount a defense."
- **"Environmental Group Supports Jackson for DEP," Ocean County Observer (Toms River, N.J. Feb. 8, 2006) at A12.** The article set forth the New Jersey Environmental Federation's ("Federation") endorsement of Lisa Jackson as the commissioner of the New Jersey Department of Environmental Protection ("DEP"). Among the more notable reasons that the Federation lent its support to Ms. Jackson were: (1) her diverse environmental experience, including work on brownfields at EPA; (2) the fact that she is an "African-American woman in a field traditionally dominated by white males;" (3) her strong public health values; and (4) her experience with issues of environmental racism.
- **"Site Adjoining 14 Mile Dump May be Developed," Detroit News (Feb. 3, 2006) at 3B.** According to the article, the development of a former dumping ground is at issue as approval to go forward with the project requires majority approval from a consortium made up of eight

members. The property at issue, 14 Mile and Quinn, comprises 64 acres in a largely African-American neighborhood and would be split into one residential parcel and one landfill parcel. According to the article, 22 acres is ready for housing, while an unspecified amount of land contains a former landfill, which is unsuitable for development. One of the consortium members, Clinton Township, is urging residential development; however, others are not as enthusiastic. They would like to see the whole property kept together and not split. Residents in the area support Clinton Township's plan of splitting the property and creating residential developments. Specifically, they believe that providing new housing will alleviate the "environmental racism" that has historically characterized the area.

2. **Recent Litigation.**

- **Dakota, Minnesota & Eastern R.R. Corp. Constr, Powder River Basin, 2006 STB LEXIS 76 (Feb. 15, 2006).** In this case, the Surface Transportation Board ("STB") provided its approval to the Dakota, Minnesota & Eastern Railroad Corporation ("Dakota") to construct and operate a 280 mile rail line from South Dakota to the Powder River Basin in Wyoming. The STB addressed four environmental issues and found that no environmental mitigation was warranted. In so finding, the STB readopted a Supplemental Environmental Impact Statement ("SEIS"), with one exception, and imposed 147 environmental mitigation conditions for the rail project. Specifically, the STB determined that no need existed for: (1) additional air quality mitigation, (2) mitigation to address the relationship between noise and vibration; or (3) a condition requiring that Dakota provide or fund horn noise mitigation. However, the STB modified one environmental condition that would increase the duties of Dakota's community liaison to include assisting communities in developing and establishing quiet zones, which the STB believed would not require Dakota to incur any additional financial burdens. The STB also addressed several other matters in its decision, including whether it should have considered the impacts of horn noise on minority and low-income communities. The STB held that no reason was given to warrant a different approach in analyzing the affects of horn noise in such environmental justice communities. Specifically, the STB cited the fact that a lower court had already upheld its method for identifying environmental justice communities along the existing rail line, which rendered the proposed horn analysis issue moot.
- **In re: Diamond Wanapa I, L.P. Wanapa Energy Center, PSD Appeal No. 05-06, 2006 EPA App. LEXIS 12 (EAB Feb. 9, 2006).** EPA's Environmental Appeals Board ("Board") reviewed a prevention of significant deterioration ("PSD") permit ("Permit") decision that EPA Region X issued on August 8, 2005. Diamond Wanapa I, L.P.

(“Diamond”) was issued the Permit to construct a combined electric generating facility (“Facility”) on land that the United States Government held in trust for the Confederated Tribes of the Umatilla Indian Reservation. Among the eight claims raised before the Board was that Region X “failed to address the human health or environmental effects of the proposed facility on both ‘majority and minority populations.’” The Permit asserted, in part, that the Facility “will be located in the vicinity of minority populations, and EPA is responsible for addressing environmental justice within these communities pursuant to Executive Order 12898. EPA is required to identify and address disproportionately high and adverse human health or environmental effects, if any, on minority populations due to this PSD permit approval.” The Petitioner claimed that EPA failed “to address the human health or environmental effects of both majority and minority populations.” The Board found that this claim was moot because the “issue was reasonably ascertainable by Petitioner but nonetheless was not raised during the comment period on the draft permit . . . [and] not preserved for review with this Board.” Moreover, the Board determined that even if the claim was timely raised, it was not convinced that review was warranted. The Board was not persuaded by Petitioner’s use of Executive Order 12898 to imply that EPA, in fulfilling its obligations under the Order, “neglected the effect of the [Facility] on the general population.” Rather, the Board found that the record indicated that EPA “fully considered and responded to concerns raised during the public comment period regarding the impacts to human health and the environment on the area surrounding the proposed Facility and concluded that the Facility would not have any adverse impacts.”

- **In re: Renewal and Modification of a State Pollutant Discharge Elimination of State Pollutant Discharge Elimination System Permit by Entergy Nuclear Indian Point 2, L.L.C. and Entergy Nuclear Indian Point 3, L.L.C., DEC No. 3-5522-00011/00004, 2006 N.Y. ENV LEXIS 3 (Feb. 3, 2006).** Entergy Nuclear Indian Point 2, L.L.C. and Entergy Nuclear Indian Point 3, L.L.C. (collectively “Entergy”) sought to renew a State Pollutant Discharge Elimination System Permit (“Permit”) for the Indian Point nuclear powered steam electric generating stations (“Stations”), which are located at the east side of the Hudson River in New York. The State Department of Environmental Conservation (“Department”) originally issued the Permit to the Stations in 1987. In this case, a Department Administrative Law Judge (“ALJ”) ruled on proposed issues arising under the Permit; however, no substantive decision was reached as to whether to accept or deny the Permit. Of particular note was the discussion regarding a petition that the African-American Environmentalist Association (“AAEA”) timely filed to receive party status. AAEA filed the petition seeking party status to provide an unique perspective to the permitting process and to raise the issue of environmental justice. In its petition, AAEA articulated that the

Department's policy was to promote environmental justice and ensure that its environmental permit process promoted environmental justice. The AAEA supported the Stations' Permit and did not want the Permit to be altered in any way that would "substantially limit" the Stations' ability to generate electricity or lead to the Stations' closure. AAEA took this view because the Stations are located "in an affluent, primarily white area of the state," such that its closure, or any restrictions to it, would shift the burden of air pollution to minority communities. AAEA then raised three issues for adjudication, which were whether: (1) the Department considered all adverse environmental impacts in the Permit process, including air impacts on minority communities; (2) the Department would have issued a different Permit had it considered the negative impacts on air quality in low-income and minority communities that will result from a reduction in generation at the Stations; and (3) the failure to consider all adverse impacts, including air impacts in minority communities, rendered the Permit unsupportable. The ALJ believed that AAEA raised substantive and significant issues; however, it also determined that AAEA collectively restated the same issue of whether the Permit adequately considered the impacts air quality. Therefore, the ALJ held that AAEA's petition for full party status established an adequate environmental interest on its part and that its issues would be considered as one issue.

3. Regulatory/Legislative/Policy.

The following items were most noteworthy:

A. Federal Congressional Bills and Matters.

- No noteworthy congressional bills were identified for this time period.
- **Congressional Matters.**
 - **Statement of Joseph D. Rich, Project Director of the Housing and Community Development Project, Lawyers Committee for Civil Rights Under the Law before the Committee on House Financial Services Subcommittee on Housing and Community Opportunity (Feb. 28, 2006).** Mr. Rich discussed fair housing issues in the aftermath of the Gulf Coast Hurricanes before the House Committee on Financial Services' Subcommittee on Housing and Community Opportunity. Specifically, Mr. Rich addressed his activities in working on the Fair Housing and Community Development Project ("Project"), which, among other things, included the filing of complaints with the Department of Housing and Urban Development ("HUD") on behalf of the Greater New Orleans Fair Housing Action Center ("Center"). The complaints set forth the Center's allegations that five internet websites, which had established housing advertising sites for

Hurricane Katrina victims, listed explicitly discriminatory advertisements in violation of the Fair Housing Act. In addition, Mr. Rich addressed the concern that agencies, such as HUD, failed to properly consider fair housing issues and were exacerbating the segregation and exclusion of African-Americans from the Gulf Coast Region. Specifically, Mr. Rich asserted the primary concern was that “low- and moderate-income renters and homeowners, particularly African-Americans, not be left behind in federal and state reconstruction and rebuilding programs.” Another particularly troubling issue that Mr. Rich identified was that “the proposed plans for Mississippi and Louisiana do not include adequate provisions for the rehabbing or rebuilding of federally subsidized/affordable housing in disaster areas.” Finally, Mr. Rich noted that six months after Hurricane Katrina, “most of the public housing in New Orleans, [which serves low income and minority tenants], remains closed.”

- ***Miscellaneous House and Senate Congressional Record Mentions of Environmental Justice include:***
 - **Statement of Senator James M. Inhofe, “Fiscal 2007 Budget: EPA,” at the Senate Environment and Public Works Committee. (Feb. 15, 2006).** Senator James M. Inhofe (R-OK) introduced EPA Administrator Stephen L. Johnson, who was scheduled to testify on President Bush’s Fiscal Year 2007 budget proposal for EPA. Senator Inhofe asserted that President Bush proposed a \$7.32 billion budget for EPA for Fiscal Year 2007, which represented a \$310 million cut from the level enacted in 2006. Senator Inhofe expressed frustration with perceived “unrealistic cuts,” particularly with respect to cuts of approximately \$400 million to water programs that were Congressional priorities. Senator Inhofe noted increased disappointment, because he sent a letter to Administrator Johnson earlier this year urging that cuts be allocated to programs that realistically should be reduced or eliminated. In doing so, Senator Inhofe expressed disappointment that EPA “actually failed to realistically reduce the budget.” Senator Inhofe went on to point out examples of dubious funding for certain EPA projects. In addition, he noted the failure of the EPA Regions to uniformly implement and enforce environmental regulations. While Senator Inhofe applauded EPA’s recent efforts in reducing the compliance burden with the Toxics Release Inventory, he also expressed deep concerns with specific environmental issues in his State, such as the Tar Creek site and the lack of compliance of 80 percent of his State’s small drinking water systems.
 - **152 CONG. REC. E 214 (Feb. 28, 2006).** Representative Martin Olav (D-MN) recognized the accomplishments of two distinguished Minnesota legislators for their efforts as civil and human rights

leaders. First, Representative Olav recognized State Representative Neva Walker (D-District 61B) for her efforts in addressing various types of disparities, including health, poverty, and racial profiling. In addition, Representative Olav recognized Representative Keith Ellison (D-District 58-B) for his work on issue of environmental justice, equal justice in the courts, and public safety. Representative Ellison cofounded the Environmental Justice Advocates of Minnesota, which addresses the environmental hazards that pollution poses.

- **Federal Register Notices.**

- **HUD, Fiscal Year 2006 SuperNOFA for HUD’s Discretionary Programs, 71 Fed. Reg. 11,712 (March 8, 2006).** On January 20, 2006, HUD published its Notice of Fiscal Year 2006 Notice of Funding Availability Policy Requirements and General Section to the SuperNOFA (“General Section”). HUD promulgated this notice to announce 39 funding opportunities that constitute its Fiscal Year 2006 SuperNOFA. Included among the funding opportunities, which makes available approximately 2.2 billion in assistance, are: (1) the Lead-Based Paint Hazard Control Grant Program, which seeks to assist states, Native American Tribes, and local governments in undertaking comprehensive programs to identify and control lead-based paint hazards in eligible privately owned housing for rental or owner-occupants; Lead Hazard Reduction Demonstration Grant Program, which is targeted for urban jurisdictions with the highest lead-based paint hazard control needs and has the same purpose as the Lead-Based Paint Hazard Control Grant Program; and Operation Lead Elimination Action Program (“LEAP”), which provides grants to private sector and nonprofit organizations to, among other things, eliminate lead poisoning as a major public health threat to children. The programs have approximately \$159,136,036 million in available funds and seek applications by June 7, 2006. These funds will be awarded to programs that fulfill eight objectives, including one that affirmatively furthers fair housing and environmental justice; (2) the Healthy Homes Demonstration Program, which seeks to develop, demonstrate, and promote cost-effective, preventive measures to correct multiple safety and healthy hazards in the home environment that produce serious diseases and injuries in children of low-income families. The program has approximately \$4,370,000 million in available funds and seeks applications by June 7, 2006. Included among the four goals that the Healthy Homes Initiative seeks to achieve is to affirmatively further fair housing and environmental justice; and (3) the Brownfields Economic Development Initiative (“BEDI”), which seeks to help local governments redevelop brownfields. The program has

approximately \$10 million in available funds and seeks applications by June 14, 2006. All BEDI grantees are obliged to affirmatively further fair housing and must undertake affirmative activities, which include, among other things, addressing environmental justice concerns. HUD expects that projects for BEDI funding “will integrate environmental justice concerns and provide measurable economic benefits for affected communities and their current residents for the long term.”

— **DOT, Environmental Impact Statement: Lafourche, St. Charles, and Jefferson Parishes, 71 Fed. Reg. 11,013 (March 3, 2006).** The Federal Highway Administration (“FHA”) of the United States Department of Transportation (“DOT”) issued this notice to announce that it will prepare an Environmental Impact Statement (“EIS”) for a proposed 43 mile road project in Lafourche, St. Charles, and Jefferson Parishes, Louisiana. The project proposes to extend Interstate 49. In accordance with the regulations and guidance of the Council on Environmental Quality (“CEQ”), the EIS will include an evaluation of social, economic, and environmental impacts of the alternatives. In addition, the EIS will comply with the requirements of Executive Order 12898, “Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations.”

— **DOD, Intent to Prepare a Draft Programmatic Environmental Impact Statement for the Louisiana Coastal Protection and Restoration Project, 71 Fed. Reg. 10,960 (March 3, 2006).** The United States Department of Defense’s (“DOD”) United States Army Corps of Engineers (“Corps”) announced that it, in close coordination with the State of Louisiana, will begin the “South Louisiana Comprehensive Coastal Protection and Restoration Report” (“LACPR Report”) to “identify, describe, and propose a full range of flood control, coastal restoration, and hurricane protection measures for south Louisiana.” Congress directed the Corps to undertake this six-month endeavor in response to the damage that Hurricane Katrina caused in southeast Louisiana and Hurricane Rita caused in southwest Louisiana. The notice noted that coordination with EPA will occur in compliance with Executive Order 12898.

— **HUD, Notice of Availability of a Final Environmental Impact Statement for the Ashburton Avenue Urban Renewal Plan and Master Plan, Yonkers, Westchester County, N.Y., 71 Fed. Reg. 10,696 (March 2, 2006).** HUD promulgated this notice to the public, agencies, and Indian tribes to announce that a Final Environmental Impact Statement (“EIS”) was available for review and comment for the Ashburton Avenue Urban Renewal Plan, Ashburton Avenue Master Plan, and the Mulford Gardens HOPE VI Revitalization Plan in the City of Yonkers, Westchester County,

New York. The City of Yonkers prepared the EIS and assessed the potential environmental impacts associated with four alternatives, which were: “(1) the Master Plan, Urban Renewal Plan, and Mulford Gardens Hope VI Revitalization Plan; (2) the Ashburton Avenue Master Plan improvements without a continuous street widening; (3) a reduced/modified scale of the Mulford Gardens HOPE VI Revitalization Plan; and (4) a no action alternative.” Environmental justice was one of the environmental effects analyzed, and HUD did not expect that environmental justice would have any significant long-term impacts. In fact, environmental justice was one of the categories whose impact would be fully mitigated by the implementation of mitigation measures. HUD requested the submission of written comments within 30 days after the notice’s publication date.

- **EPA, Lead, Renovation, Repair, and Painting Program; Availability of Supplemental Information, 71 Fed. Reg. 10,628 (March 2, 2006).** On January 10, 2006, EPA proposed new requirements to reduce exposure to lead hazards that renovation, repair, and painting activities created by disturbing lead-based paint. 71 Fed. Reg. 1588. EPA submitted a draft economic analysis of the costs and benefits associated with the rulemaking to the Office of Management and Budget (“OMB”), pursuant to Executive Order 12866. This notice announces the availability of a revised economic analysis, which contains EPA’s updated estimate of the potential costs and benefits of the proposed rule. In addition, the revised economic analysis, among other things, analyzed “whether the regulation has a disproportionate effect on low-income and/or minority persons,” in direct response to the charge of Executive Order 12898. Comments on the revised economic analysis must be received by April 10, 2006.

- **DOI, Draft Environmental Impact Statement for the Scotts Valley Band of Pomo Indians’ Proposed 29.87 Acre Fee-to-Trust Transfer and Casino Project, Contra Costa County, California, 71 Fed. Reg. 10,055 (Feb. 28, 2006).** The Department of Interior’s (“DOI”) Bureau of Indian Affairs (“BIA”) announced that it filed a Draft Environmental Impact Statement (“DEIS”) with EPA for a proposed 29.87 acre fee-to-trust land transfer and casino project in Contra Costa County, California. The DEIS will help provide for the economic development of the Scotts Valley Band of Pomo Indians. The DEIS will consider a range of alternatives, including: (1) the proposed casino complex; (2) a reduced casino; (3) a reduced casino and commercial development; (4) retail/office development; and (5) no action. The DEIS will also address a range of environmental issues, such as environmental justice. Comments on the DEIS are due by April 28, 2006.

- **GSA, Notice of Intent to Prepare an Environmental Impact Statement for the Calexico West Port of Entry Expansion/Renovation, Calexico, California, 71 Fed. Reg. 9825 (Feb. 27, 2006).** The General Services Administration (“GSA”) announced that it would prepare an Environmental Impact Statement (“EIS”) for the expansion/renovation of the Calexico West Port of Entry in Calexico, California. The expansion/renovation will be done to reduce traffic congestion in Calexico and Mexicali, Mexico city centers caused by cars crossing the border. In addition, the expansion/renovation will likely improve border security and provide safe, secure, and efficient operational areas for the public. Environmental justice represents one of the potential impacts of the proposed projects that the EIS will consider.
- **DOT, HolRail L.L.C.---Construction and Operation Exemption---In Orangeburg and Dorchester Counties, S.C., 71 Fed. Reg. 9189 (Feb. 22, 2006).** DOT’s Surface Transportation Board (“Board”) has determined that an EIS should be prepared for the construction and operation of a two-mile rail line in Orangeburg and Dorchester Counties, South Carolina. Accordingly, the Board announced the availability of the Final Scope of Study for the EIS. The Final Scope of Study summarizes and addresses the primary environmental concerns that were raised in comments to the Draft Scope of Study. Among other things, the EIS addressed impact areas, which will include the effects of the proposed construction and operation of the new rail line on transportation and traffic safety, public health and worker health and safety, and environmental justice. For environmental justice, the EIS will: “(1) [d]escribe the demographics of the communities potentially impacted by the construction and operation of the proposed new rail line; (2) [e]valuate whether new rail line construction or operation would have a disproportionately high adverse impact on any minority or low-income group; [and] (3) [p]ropose mitigative measures to minimize or eliminate potential project impacts on environmental justice communities of concern, as appropriate.”
- **EPA, Boric Acid/Sodium Borate Salts Risk Assessments; Notice of Availability, 71 Fed. Reg. 9112 (Feb. 22, 2006).** EPA announced the availability of its risk assessments for the pesticide boric acid/sodium borate salts. In soliciting public comment on these documents by April 24, 2006, EPA requested that the public suggest risk management ideas or proposals to address the identified risks. EPA is developing a tolerance reassessment decision (“TRED”) for boric acid/sodium borate salts through a modified four-phase public participation process to ensure that all pesticides meet current health and safety standards. To help

address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to boric acid/sodium borate salts, compared to the general population.”

— **DOI, Notice of Intent to Prepare a Resource Management Plan for the John Day Basin Portion of the Central Oregon Resource Area and Associated Environmental Impact Statement, 71 Fed. Reg. 8868 (Feb. 21, 2006).**

The Bureau of Land Management (“BLM”) of the United States Department of the Interior (“DOI”) announced its intent to prepare a Resource Management Plan (“RMP”) and an EIS for the John Day Basin. BLM plans to hold public scoping meetings; however, the dates were not announced. Environmental justice represents one of the major preliminary issues that BLM will address in planning to develop the scope of environmental analysis, as well as EIS alternatives.

— **DOT, Environmental Impact Statement; Mukilteo, WA, 71 Fed. Reg. 8635 (Feb. 17, 2006).** DOT’s Federal Transit Administration (“FTA”) promulgated the notice to announce that an EIS will be prepared for the proposed development of a multimodal ferry terminal in the City of Mukilteo, Snohomish County, Washington. The proposed multimodal ferry will replace the aging existing terminal and will accommodate the projected growth for passengers and vehicles on the route. Access to the ferry, as well as safety, will improve due to the proposed multimodal ferry. The notice announced that two public meetings will be held March 21 and 22, 2006 at different locations, and comments on the scope of alternatives and impacts to be considered in the EIS are requested by April 5, 2006. Environmental justice is one of the potential areas of impact that will be evaluated.

— **DOS, Finding of No Significant Impact and Summary Environmental Assessment Valero Logistics L.P. Pipeline in Hidalgo County, TX, 71 Fed. Reg. 8631 (Feb. 17, 2006).** The United States Department of State (“DOS”) issued this notice to propose the issuance of a Presidential Permit to Valero Logistics Operations L.P. (“Valero”) “to construct, connect, operate, and maintain an 8-inch outer diameter pipeline to convey light naphtha (“naphtha”) across the border from Mexico to the Valero Terminal in Hidalgo County, Texas.” A draft environmental assessment was prepared under the DOS’s guidance and supervision, which numerous federal and state agencies independently reviewed. Included in the assessment of the potential environmental impacts resulting from the proposed action was a discussion of potential environmental justice and socio-economic concerns. The

population in Hidalgo County is heavily minority. The risks of the pipeline were weighed against the benefits of removing tanker trucks as the primary mode of naphtha transportation. While the risk from exposure to the pipeline included “temporary, minor construction related noise and threats to human safety due to fire or accidental product release,” the notice articulated that the benefits, such as the reduction of hazardous air pollutants emissions, outweigh the risks. Accordingly, no evidence existed “to suggest that minority or low-income populations would experience disproportionate adverse impacts as a result of the construction and operation of the Valero Burgos Pipeline.”

— **EPA, Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Camden County Energy Recovery Associates, 71 Fed. Reg. 8577 (Feb. 17, 2006).**

EPA announced that it had responded to a joint citizen petition that requested EPA to object to the operating permit that the New Jersey Department of Environmental Protection (“NJDEP”) issued to Camden County Energy Recovery Associates. EPA partially granted and partially denied the petition that Rutgers Environmental Law Clinic filed on behalf of various New Jersey environmental groups. Among the claims raised in the petition was that the “permit was issued in violation of state and federal environmental justice executive orders.” However, in concluding that NJDEP must reopen the permit, EPA does not appear to address that particular claim.

— **EPA, Propiconazole Risk Assessments; Notice of Availability and Risk Reduction Options, 71 Fed. Reg. 7949 (Feb. 15, 2006).**

EPA announced the availability of its risk assessments and related documents for the triazole fungicide propiconazole and for its free triazole metabolites. In soliciting public comment on these documents by April 17, 2006, EPA requested that the public suggest risk management ideas or proposals to address the identified risks. EPA is developing a Reregistration Eligibility Decision (“RED”) for propiconazole through a modified four-phase public participation process to ensure that all pesticides meet current health and safety standards. To help address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to propiconazole, compared to the general population.”

— **EPA, Triadimenol Risk Assessments; Notice of Availability and Risk Reduction Options, 71 Fed. Reg. 7947 (Feb. 15, 2006).**

EPA announced the availability of its risk assessments and related documents for the triazole fungicide triadimenol and for its free triazole metabolites. In soliciting public comment on these

documents by April 17, 2006, EPA requested that the public suggest risk management ideas or proposals to address the identified risks. EPA is developing a TRED for triadimenol through a modified four-phase public participation process to ensure that all pesticides meet current health and safety standards. To help address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to triadimenol, compared to the general population.”

— **EPA, Triadimefon Risk Assessments; Notice of Availability and Risk Reduction Options, 71 Fed. Reg. 7945 (Feb. 15, 2006).**

EPA announced the availability of its risk assessments and related documents for the triazole fungicide triadimefon and for its free triazole metabloites. In soliciting public comment on these documents by April 17, 2006, EPA requested that the public suggest risk management ideas or proposals to address the identified risks. EPA is developing a RED for triadimefon through a modified four-phase public participation process to ensure that all pesticides meet current health and safety standards. To help address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to triadimefon, compared to the general population.”

— **EPA, Oxytetracycline Risk Assessments; Notice of Availability and Risk Reduction Options, 71 Fed. Reg. 7940 (Feb. 15, 2006).**

EPA announced the availability of its risk assessments and related documents for the pesticide oxytetracycline. In soliciting public comment on these documents by April 17, 2006, EPA requested that the public suggest risk management ideas or proposals to address the identified risks. EPA is developing a TRED for oxytetracycline through a modified four-phase public participation process to ensure that all pesticides meet current health and safety standards. To help address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to oxytetracycline, compared to the general population.”

— **EPA, Streptomycin Risk Assessments; Notice of Availability and Risk Reduction Options, 71 Fed. Reg. 7940 (Feb. 15, 2006).**

EPA announced the availability of its risk assessment(s) and related documents for the pesticide streptomycin. In soliciting public comment on these documents by April 17, 2006, EPA requested that the public suggest risk management ideas or

proposals to address the identified risks. EPA is developing a TRED for streptomycin through a modified four-phase public participation process to ensure that all pesticides meet current health and safety standards. To help address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to streptomycin, compared to the general population.”

- **EPA, Rotenone Risk Assessments; Notice of Availability, and Risk Reduction Options, 71 Fed. Reg. 7041 (Feb. 10, 2006).** EPA announced the availability of its risk assessments and related documents for the pesticide rotenone. In soliciting public comment on these documents by April 11, 2006, EPA requested that the public suggest risk management ideas or proposals to address the identified risks. EPA is developing a RED for rotenone through a modified four-phase public participation process to ensure that all pesticides meet current health and safety standards. To help address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to rotenone, compared to the general population.”

B. **State Congressional Bills and Matters.**

- **Alabama, House Bill 716, introduced on March 2, 2006 by Representative Joseph Mitchell (D-District 103). Status: Introduced.** This Bill requires the Alabama Department of Environmental Management (“Department”) to undertake risk assessments to reduce the amount of toxic waste in environmental high impact areas. The Bill would require the Department to identify environmental high impact areas on a county basis and compile data regarding toxic pollutants released into the environment, as well as publish certain assessment methods and calculations for releases of toxic substances for public comment. The Bill would require the State Health Officer to issue a public report on the incidences of diseases. In addition, the Department would provide grants to monitor and respond to adverse health risks and hold public meetings. Moreover, the Bill requires the Department to establish certain programs for communities in environmental high impact areas, such as a program that “facilitates contact between citizens of an affected community and environmental groups, health experts, and legal advisors who are willing to volunteer their services to promote environmental justice.”
- **Alabama, Senate Bill 526, introduced on March 7, 2006 by Senator Quinton T. Ross, Jr. (D-District 26). Status: Introduced.** The Bill

would establish the Division of Environmental Justice and Health (“Division”) within the Alabama Department of Environmental Management (“Department”). The Division would review proposals for discharging toxic pollutants into the environment “to determine the affect of the discharge on subpopulations with specific demographic characteristics.” A subpopulation may include people of a different race, color, or national origin, as well as households with incomes of less than \$15,000. In addition, the Bill will require the Department to limit releases “to prevent a disproportionate effect on subpopulations.”

- **California, Senate Bill 757, introduced on February 22, 2005 by Senator Christine Kehoe (D-District 39). Status: Rereferred to Assembly Committee on Transportation on February 27, 2006.** The Bill, the “Kehoe Oil Conservation, Efficiency, and Alternative Fuels Act,” would declare that state agencies shall take all cost-effective and technologically feasible action required to reduce the growth of petroleum consumption and to increase the use of alternative fuels. The Bill requires that California EPA (“Cal-EPA”) to consult with, among others, the Cal-EPA Environmental Justice Advisory Committee to carry out specified actions, such as the submission of certain reports or assessments.
- **California, Senate Bill 1379, introduced on February 21, 2006 by Senator Don Perata (D-District 9). Status: Introduced. May be acted upon on or before March 24, 2006.** The Bill requires the California Department of Health Services’ Division of Environmental and Occupational Disease Control to establish the Healthy Californians Biomonitoring Program (“Program”) to monitor the presence and concentration of designated chemicals in Californians. The Program shall use the principles of the California EPA Environmental Justice Strategy and Environmental Justice Action Plan “that provide opportunities for the State to develop policies on the specific priorities of public participation and community capacity building with meaningful stakeholder input.” In addition, one of the 16 members that will comprise the Healthy Californians Biomonitoring Program Advisory Panel shall have expertise in environmental justice.
- **California, Assembly Bill 2144, introduced on February 21, 2006 by Assembly Member Cindy Montanez (D-District 39). Status: May be heard in Committee on March 24, 2006.** The Bill amends certain sections of California’s Health and Safety Code, while adding a section to the State’s Water Code. Specifically, the Bill requires a bona fide purchaser, innocent landowner, or contiguous property owner, who seeks immunity from response costs or damage claims relating to a site in an urban landfill area, to enter into an agreement with an agency to perform a site assessment and, if necessary, prepare and implement a response plan. The Bill defines “agency” to mean the Department of Toxic Substances

Control, the State Water Resources Control Board, or a California regional water quality board. Included among other Bill requirements was the mandate that the agency consider environmental justice issues for the most-impacted communities, including low-income and racial minority populations.

- **California, Assembly Bill 2490, introduced on February 23, 2006 by Assembly Member Ira Ruskin (D-District 21). Status: *May be heard in Committee on March 26, 2006.*** This Bill would enact the California Toxic Release Inventory Program of 2006 to require Cal-EPA to establish the California Toxic Release Inventory (“TRI”) Program (“Program”) on, or before, July 1, 2007. The Program would impose the same, or more stringent, requirements as the federal Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”). The Bill responds to EPA’s proposed changes to its TRI regulations. Specifically, EPA promulgated a notice in the *Federal Register* on October 4, 2005 that proposed to raise the threshold reporting amounts of toxic chemicals and decrease the frequency of required reporting. Since the proposed changes would, among other things, “create further environmental justice challenges by placing an unfair burden for residents in low-income areas, where chemical plants and other polluters are often located,” the Bill was introduced to ensure that the “citizens of California have access to timely and accurate data about toxic releases.”
- **California, Assembly Bill 3032, introduced on February 24, 2006 by Assembly Member Guy S. Houston (R-District 15). Status: *Read first time on February 27, 2006. May be heard in Committee on March 27, 2006.*** The Bill would state various findings and determinations of California’s Legislature concerning housing and infrastructure development in the State. Among its findings were that California’s economic competitiveness and quality of life were undermined due to an inadequate housing supply and skyrocketing housing costs. The Bill recommended, among other things, that local governments should implement the California Environmental Quality Act in a way that advances the quality of the environment and equity for residents. It called for a mix of housing types for all economic segments within each community and the maximization of public subsidies to achieve affordable housing for low- to moderate-income households.
- **Connecticut, Senate Bill 290, introduced on February 22, 2006 by the Environment Committee. Status: *Referred to Joint Committee on Environment Committee on February 22, 2006. Public Hearing scheduled for February 27, 2006.*** This Bill concerns environmental justice and would “reduce the incidence of pollution in communities that are already overburdened by environmental pollution.” To do so, the Bill requires that the Connecticut Department of Environmental Protection

(“Department”) shall identify and compile a list of overburdened communities, which the Bill defines. In addition, by no later than January 1, 2007, the Department, the Connecticut Siting Council, and the Department of Public Utility Control “shall adopt regulations . . . that describe the Departments’ or Council’s procedures concerning the consideration of environmental justice in granting licenses, permits, or authorizations, taking action that could have human health or environmental effects, or in other decision-making processes.”

- **Georgia, House Bill 1550, introduced on March 2, 2006 by Representative Judy Manning (R-District 32). Status: Second Readers in House Committee on Natural Resources and Environment on March 6, 2006. See also Georgia, Senate Bill 646, introduced on March 6, 2006 by Senator Casey Cagle (R-District 49). Status Referred to Senate Committee on Natural Resources and Environment on March 6, 2006.** The Bill would amend Chapter 8 of Title 12 of the Official Code of Georgia Annotated, related to waste management. Specifically, the Bill would enact the “Georgia Brownfields Rescue, Redevelopment, Community Revitalization, and Environmental Justice Act” and would change provisions related to the rehabilitation of brownfields property. In addition, the Bill would: encourage the voluntary rehabilitation of property with a presence or suspected presence of hazardous substances, pollutants, or contaminants; authorize the limitation of liability of persons carrying out such rehabilitation under certain conditions and compliance with program standards; provide for a Brownfields Program Section within the Environmental Protection Division of the Department of Natural Resources; provide for other related matters; provide a contingent effective date; and repeal conflicting laws.
- **Hawaii, Senate Bill 2145, introduced on January 23, 2006 by Senator Colleen Hanabusa (D-District 21). Status: Passed Third Reading as amended (Senate Draft 2) on March 7, 2006. Transmitted to House.** The Bill appropriated \$146,000 out of the general revenues of the State for the environmental council to hire a program director to facilitate and coordinate the State’s environmental justice activities, which will include: (1) defining environmental justice through educational community outreach activities; (2) developing and promulgating a guidance document that addresses environmental justice in all phases of the EIS process; (3) recommending to update the EIS process; and (4) conducting educational and community outreach activities. In addition, the Office of Environmental Quality Control shall contract with the University of Hawaii Environmental Center to conduct a comprehensive review of the State’s current EIS process.
- **Maryland, House Bill 1635, introduced on February 28, 2006 by Representative Rudolph C. Cane (D-District 37A). Status: Re-**

referred to House Committee on Environmental Matters on March 6, 2006. This Bill establishes the Minorities Outreach and Involvement in the Environmental Community Program (“Program”). It requires the State’s Department of Natural Resources to administer the Program and calls on the Chesapeake Bay Trust to provide certain funding. The Bill authorizes the Program to solicit and accept grants or donations from certain sources as well.

- **Massachusetts, Senate Bill 2377, introduced on February 15, 2006 by the Joint Committee on Environment, Natural Resources, and Agriculture. Status: Referred to the Senate Ways and Means Committee on February 15, 2006.** The Bill promotes environmental justice in Massachusetts. Specifically, it will “develop statewide policies to promote environmental justice in the Commonwealth and protect and regulate the use of areas of critical environmental justice concern.” Among other things, the Bill defines “environmental justice” and “environmental justice population.” It sets forth the components of an environmental justice program, which included such criteria as: (1) the establishment of the Environmental Justice and Brownfields Redevelopment Director position; (2) the identification of environmental justice populations using geographic information systems mapping; (3) providing introductory environmental justice training to employees; (4) the development of fact sheets describing programs relevant to environmental justice populations in English and other languages; and (5) the development and maintenance of a list of alternative information outlets that service environmental justice populations.
- **Minnesota, House Bill 2599, introduced on March 1, 2006 by Representative Joe Mullery (D-District 58A). Status: Referred to House Committee on Environment and Natural Resources on March 1, 2006.** The Bill established the Environmental Justice Act and proposed coding for the new law in Minnesota Statutes Chapter 116B. Included among the provisions are: (1) the policy that the State ensures communities fair treatment and meaningful involvement in decision-making regardless of race and income; (2) the creation of an Environmental Justice Task Force (“Task Force”) to make recommendations regarding actions that must be taken to address environmental justice issues consistent with existing statutory and regulatory authority; and (3) the creation of a fifteen member Environmental Justice Advisory Council (“Advisory Council”). The Bill proposes that the Environmental Justice Act become effective on July 1, 2006, while the Task Force and Advisory Council be established and operating by October 1, 2006.
- **New York, Senate Bill 6722, introduced on February 14, 2006 by Senator Kevin S. Parker (D-District 21). Status: Referred to Senate**

Committee on Energy and Telecommunications on February 14, 2006.

Among other things, the Bill amends the energy law in terms of state energy planning. Specifically, new Article 6 is added to the energy law by establishing a state energy planning board with powers to: adopt a state energy plan; adopt rules and regulations; issue subpoenas; and authorize hearings. The state energy plan will include, among other things, an environmental justice analysis.

- **Rhode Island, House Bill 7509, introduced on February 16, 2006 by Representative Bruce J. Long (R-District 74). Status: Referred to House Committee on Environment and Natural Resources on February 16, 2006. See also Rhode Island, Senate Bill 2503, introduced on February 9, 2006 by Senator Kevin A. Breene (R-District 34). Status: Referred to Senate Committee on Environment and Agriculture on February 9, 2006.** The Bill, which would take effect upon passage, amends the Industrial Property Remediation and Reuse Act. Included among the provisions is Section 23-19.14-5, which requires the Department of Environmental Management (“Department”) to consider the effect of cleanups on the populations surrounding a contaminated site. In addition, this Section requires the Department to consider issues of environmental equity for low income and minority communities. Finally, it requires the Department to develop and implement a process to ensure community involvement throughout the investigation and remediation of contaminated sites.
- **Tennessee, House Joint Resolution 864, introduced on February 23, 2006 by Representative Johnny Shaw (D-District 80). Status: Filed for Introduction on February 23, 2006. See also Tennessee, House Bill 3305, introduced on February 16, 2006 by Representative Johnny Shaw (D-District 80). Status: Referred to House Conservation Committee on February 23, 2006.** The Resolution urges Tennessee’s Department of Environment and Conservation (“Department”) to investigate allegations of environmental racism in the Eno Road Community of Dickson, Tennessee due to the dumping of toxic chemicals there since 1968. According to the Resolution, the toxic chemicals have polluted the well water supply of the predominantly African-American community. The Resolution calls on the Department to conduct health screening to determine whether “the residents of color experience a disparate health status” and assess “the incidence of cancer, birth defects, immunologic diseases, and other health indicators that are related to exposure to toxic hazards.” In addition, the Resolution urged EPA to also investigate whether environmental racism occurred at the community.
- **Virginia, Senate Bill 107, introduced on January 11, 2006 by Senator Henry L. Marsh III (D-District 16). Status: Passed House and Senate. Signed by House Speaker on March 7, 2006. Signed by Senate**

President on March 8, 2006. The Bill amends Virginia law establishing the governing structure of the Martin Luther King, Jr. Living History and Public Policy Center, an independent nonprofit corporation, to conform the statutes with Section 501 (c) (3) of the Internal Revenue Code and federal and state laws governing tax exempt organizations. This Bill, which is a recommendation of the Dr. Martin Luther King, Jr. Memorial Commission, would establish a Board of Trustees (“Board”) and require the Board to, among other things, conduct public forums, conferences, lectures, or research to “address contemporary issues and public policies” on such topics as environmental justice.

- **State Regulatory Alerts.**

- No noteworthy **State Regulatory Alerts** were identified for this time period.